



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MGE/147788

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 01, 2013, under Wis. Stat. §49.45(5), and Wis. Admin. Code §HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance (MA), a telephonic hearing was held on April 16, 2013, at Waukesha, Wisconsin. On April 30, 2013 the petitioner's representative submitted additional information in this matter to the administrative law judge. That information was forwarded to the agency for consideration. The petitioner's representative thereafter consented to hold the record open to allow the agency time to verify the representative's information regarding petitioner's residency. On May 20, 2013 the agency provided the verification information in this matter to the administrative law judge and confirmed that a copy was also mailed to petitioner.

The issue for determination is whether the agency correctly denied petitioner's January 5, 2013 application for MA because petitioner is not a qualifying immigrant.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703  
By: Josie LoMonte  
Waukesha County Health and Human Services  
500 Riverview Avenue  
Waukesha, WI 53188

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

### **FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. On January 5, 2013 petitioner applied for MA. Exhibit 1.
3. On January 9, 2013 the agency issued a notice of decision to petitioner stating that the application was denied because petitioner was not a US citizen or a qualifying immigrant. Exhibit 4.
4. Petitioner was lawfully admitted for permanent residence in the United States on September 6, 2008. She is a national from St. Lucia.

### **DISCUSSION**

As a nonfinancial condition of full MA eligibility, including MA-Disability coverage, a person must be either a U.S. citizen or a lawfully admitted alien who falls into one of several precise categories. See 42 C.F.R. §435.406, Wis. Admin. Code §DHS 103.03(2), and *Medicaid Eligibility Handbook* (MEH), §3.12.1, available online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>. The *Handbook* provides the following lengthy guidance with respect to alien eligibility:

#### 7.3.1 Immigrants Introduction

Immigrants are persons who reside in the U.S., but are not U.S. citizens or nationals. The immigrants described below, who apply for Medicaid and meet all eligibility requirements, are entitled to receive Medicaid benefits.

1. A refugee admitted under Immigration & Nationality Act (INA) Section 207.

A refugee is a person who flees his/her country due to persecution or a well-founded fear of persecution because of race, religion, nationality, political opinion, or membership in a social group.

An immigrant admitted under this refugee status may be eligible for Medicaid even if his/her immigration status later changes.

2. An asylee admitted under INA Section 208.

Similar to a refugee, this is a person who seeks asylum and is already present in the U.S. when s/he requests permission to stay.

An immigrant admitted under this asylee status may be eligible for Medicaid even if his/her immigration status later changes.

3. An immigrant whose deportation is withheld under INA Section 243(h) and such status was granted prior to April 1, 1997, or an immigrant whose removal is withheld under INA Section 241(b)(3) on or after April 1, 1997.

An immigrant admitted under this status may be eligible for Medicaid even if his/her immigration status later changes.

4. A Cuban/Haitian entrant.

An immigrant admitted under this Cuban/Haitian entrant status may be eligible for Medicaid even if his/her immigration status later changes.

5. An American Indian born in Canada who is at least 50% American Indian by blood, or an American Indian born outside the U.S. who is a member of a Federally recognized Indian tribe.
6. Victims of a severe form of trafficking in accordance with 107(b)(1) of the Trafficking Victims Protection Act of 2000 (P.L. 106-386).
7. Lawfully admitted for permanent residence under the INA.
8. Paroled into the U.S. under INA Section 212(d)(5).
9. Granted conditional entry under immigration law in effect before April 1, 1980 [INA Section 203(a)(7)]
10. - An immigrant who has been battered or subjected to extreme cruelty in the U.S. and meets certain other requirements.
11. - An immigrant whose child has been battered or subjected to extreme cruelty in the U.S. and meets certain other requirements.
12. An immigrant child who resides with a parent who has been battered or subjected to extreme cruelty in the U.S. and meets certain other requirements.

#### **7.3.1.1 Special Provisions for Immigrants in items 7-12**

**\*\*If these immigrants (from items 7-12) lawfully entered the U.S. on or after August 22, 1996, they must also be *one* of the following:**

- a. Lawfully residing in Wisconsin and an honorably discharged veteran of the U.S. Armed Forces, **or**
- b. Lawfully residing in Wisconsin and on active duty ( other than active duty for training ) in the U.S. Armed Forces, **or**
- c. Lawfully residing in Wisconsin and the spouse, unmarried dependent child, or surviving spouse of a person described in "a" or "b" **or**
- d. An Amerasian, **or**
- e. Resided in the U.S. for at least five years since his/her date of entry.

*Medicaid Eligibility Handbook*, §7.3.1, et. seq.; see also BadgerCare Eligibility Handbook §4.3, available online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>.

With certain exceptions not relevant here (refugees, immigrants whose deportation has been withheld, Cuban/Haitian, etc.) a person who is not a U.S. citizen is not eligible for MA unless she has been lawfully admitted for permanent residence under the INA and lawfully resided in the United States for at least 5 years since her date of entry. Petitioner's representative testified at hearing that petitioner had been in the U.S. prior to the September 2008 date that the agency was using to establish her lawful residency. She also submitted post-hearing an email exchange she had with the U.S. Customs and Border Protection INFO Center in an attempt to show an earlier date of entry. This then caused the agency to perform a secondary verification search with the United States Citizen and Immigration Services (USCIS). The USCIS is the federal agency responsible for immigration and citizenship and was formerly known as Immigration and Naturalization Service (INS). The USCIS document again shows that petitioner was lawfully admitted for permanent residence in the United States on September 6, 2008. Thus, the

preponderance of the credible evidence supports the agency's finding that she was not eligible for MA with her January application, and would not be eligible for MA until September 6, 2013. If petitioner has any other credible information to support a finding that she qualifies under these requirements, she can request a rehearing and provide that information. However, at this time, I must find that the agency acted correctly under the law.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. In other words, I cannot award MA because I think it is fair.

I also add that the only alternative for coverage now is for services that can be considered emergency medical services. See, *Handbook*, §34.1; and see, 8 U.S.C. 1611(b)(1)(A). The *Medicaid Eligibility Handbook*, §34.1.1, defines emergency medical services as follows:

#### **34.1.1 Emergency Services Eligibility Introduction**

Documented and undocumented non-citizens ineligible under regular Medicaid due to alien status can be eligible for Emergency Services, if s/he meets all other eligibility requirements except having or applying for an SSN. Non-citizens may have an SSN and may still qualify for Emergency Services. If a non-citizen would otherwise be eligible for any type of EBD Medicaid, s/he would qualify for Emergency Services.

Emergency Services only covers medical services needed for the treatment of an emergency medical condition. Services related to organ transplant procedure are not covered by Emergency Services.

An emergency means a medical condition (including labor and delivery) that shows acute symptoms of sufficient severity (including severe pain) such that the lack of immediate Medicaid could result in one or more of the following:

1. Serious jeopardy to the patient's health.
2. Serious impairment to bodily functions.
3. Serious dysfunction of a bodily organ or part.

All labor and delivery services are emergency services and are covered under Emergency Services for eligible non-qualifying aliens.

The IM agency does not determine if an emergency condition is eligible for Emergency Services coverage.

The medical provider submits claims for emergency medical services to the fiscal agent. It determines if a condition is an emergency medical condition covered by Emergency Services.

A citizen is not eligible for Medicaid Emergency Services even when s/he cannot produce citizenship and/or identity verification.

Petitioner's representative and the agency's representative agreed at hearing that they would exchange information to see if petitioner could receive coverage for medical bills under the emergency services provisions.

**CONCLUSIONS OF LAW**

The agency correctly denied petitioner's January 5, 2013 application for MA because petitioner is not a qualifying immigrant.

**THEREFORE, it is**

**ORDERED**

The petition for review herein is dismissed.

**REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

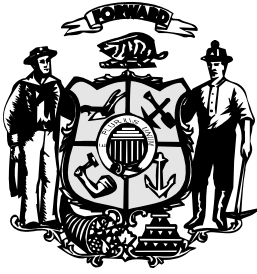
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 21st day of May, 2013

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\sKelly Cochrane  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on May 21, 2013.

Waukesha County Health and Human Services  
Division of Health Care Access and Accountability